

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application.

Claims 1-10 are now present in this application. Claims 1, 7, 8 and 10 are independent. Claims 1, 5, 6 and 10 have been amended. Claim 5 has been amended to delete the duplicative second occurrence of "end" in the last line of the claim. Claim 10 has been re-written in independent form. Claim 6 has been amended to be consistent with amended claim 1. No new matter is involved

Reconsideration of this application, as amended, is respectfully requested.

PTO-892 Notice of References Cited

Applicants continue to note that the Examiner has not listed the Gold reference GB 2280829 on the form PTO-892. The Examiner is again requested to make this reference of record by listing it on a PTO-892 in the next Office Action. This reference was not listed on the PTO-892 mailed with the October 27, 2004 Office Action, contrary to the assertion on the Examiner-initialed copy of the PTO-1449 attached to the outstanding office Action, that the reference was listed on the PTO-892 mailed with the Office Action of October 27, 2004.

Election of Species Requirement Change of Position

The Examiner has now, for the first time, asserted that claim 5 is drawn to non-elected species II and has withdrawn claim 5 from consideration. Applicants respectfully traverses this requirement.

In the first place, the only amendment that was made to claim 5 in the Amendment filed on January 19, 2005 was to give clarify that the "lower end portion" was the "lower end portion of the front end surface." This did not change the scope of the claim nor change its meaning.

In the second place, as pointed out in Applicant's Reply to the Restriction/Election Requirement filed on September 16, 2004, claim 5 clearly reads on elected species I as well as on non-elected species II and III. The Examiner clearly agreed with this designation of claim 5 as reading on the elected species by not disagreeing with it and by examining claim 5 on its merits.

In the third place, the Office Action fails to present reasons why claim 5, all of a sudden, reads on non-elected species II and does not read on elected species I. Applicants are entitled to be made aware of the reasons the Examiner believes that claim 5 does not read on elected species I under the Administrative Procedures Act, which requires that Applicants be given procedural and substantive due process, In re Zurko, 119 S.Ct. 1816, 50 USPQ2d 1930 (1999), and In re Gartside, 53 USPQ2d 1769 (Fed. Cir. 2000). In an analogous situation, if Applicants merely broadly alleged that a restriction

requirement were in error, this would not comply with the requirements of 37 CFR 111(b) and an election based on that restriction would become an election without traverse – see MPEP §818.03(a).

In the fourth place, the Office Action has not demonstrated that there is any undue administrative burden on the Examiner to examine claim 5, especially where, as here, claim 5 has already been examined on the merits. In this regard, the Office has not presented any reasoning to demonstrate that there is an undue administrative burden on the Examiner to search and examine claim 5 because claim 5 has already been searched and examined on the merits.

Reference is made in this regard to MPEP 803, which clearly states that if the search and examination of an application can be made without serious burden, the Examiner should do so without requiring restriction even where independent and distinct inventions are being claimed.

Accordingly, this withdrawal of claim 5 was improper.

Under the circumstances, Applicants are entitled to reopening of the prosecution of this Application so that claim 5 can be examined on its merits. To do this, the finality of the outstanding Office Action has to be withdrawn. Moreover, because the finality of the outstanding Office Action has to be withdrawn to reopen prosecution and treat claim 5 on its merits, the amendments submitted above have to be entered and examined on their merits along with reinstated claim 5.

Entry of Amendments

Applicants respectfully submit that it is proper to enter the claim amendments set forth above for the reasons stated in the previous paragraph. An additional reason for entering those amendments is that they place the Application in condition for allowance.

Rejection Under 35 U.S.C. § 102

Claims 1, 2 and 6 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Choi, U.S. Patent D463,200 (hereinafter referred to as "Choi"). Further, claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Pitstick et al., U.S. Patent No. D242,421 (hereinafter referred to as "Pitstick"). These rejections are respectfully traversed.

Complete discussions of the Examiner's rejections are set forth in the Office Action, and are not being repeated here.

A prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see, In re Paulsen, 30 F.3d 1475, 1478, 1479, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital

Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicant is entitled to the patent.

Claim 1 positively recites a combination of features not disclosed by any of the applied art. For example, Choi's door has an upper slanted portion wherein the clear portion is limited to small areas on both sides of a control panel that extends over substantially all of the upper, slanted, portion of the door. Accordingly, Choi does not anticipate the claimed invention.

Nor does Pitstick anticipate claim 1. Instead, the window portion of Pitstick's front door is limited to the middle portion of the door, and is not located in the slanted upper portion of the door.

Accordingly, neither Choi nor Pitstick anticipates claim 1.

Reconsideration and withdrawal of these rejections are respectfully requested.

Allowable Subject Matter

The Examiner states that claims 7-9 are allowed, and that claim 10 would be allowable if rewritten in independent form.

Applicants thank the Examiner for the indication of allowed and allowable subject matter in this application. Claim 10, which depended from claim 1, has been re-written in independent form to include the subject matter of originally presented claim 1. Accordingly, Applicants respectfully submit that claim 10 is allowable.

Additional Cited References

Because the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Office Action dated: March 1, 2005
Reply filed: June 1, 2005
Art Unit: 3742

Appl. No. 10/665,527
Docket No. 0630-1847P
Page 11 of 11

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

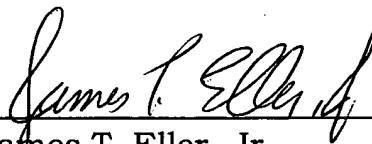
Prompt and favorable consideration of this Amendment is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By:



James T. Eller, Jr.
Reg. No.: 39,538

JTE/RJW:trb/gf 

P.O. Box 747
Falls Church, Virginia 22040-0747
Telephone: (703)205-8000